

# **EXHIBIT 5**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

The Woodlands Pride, Inc.; Abilene Pride Alliance; Extragrams, LLC; 360 Queen Entertainment LLC; Brigitte Bandit,

Plaintiffs,

v.

Civil Action No. 4:23-cv-02847

Angela Colmenero, in an official capacity as Interim Attorney General of Texas; The Woodlands Township; Montgomery County, Texas; Brett Ligon, in an official capacity as District Attorney of Montgomery County; City of Abilene, Texas; Taylor County, Texas; James Hicks, in an official capacity as District Attorney of Taylor County; Delia Garza, in an official capacity as County Attorney of Travis County; Joe D. Gonzalez, in an official capacity as District Attorney of Bexar County,

Defendants.

**DECLARATION OF RICHARD MONTEZ JR.**

Pursuant to 28 U.S.C. § 1746, Richard Montez Jr. declares:

1. My name is Richard Montez Jr. I am over twenty-one (21) years of age and am fully competent to testify about the matters contained herein. The following statements are made within my personal knowledge and are true and correct.

2. I am a resident of Bexar County, Texas. I was born in Texas and am a lifelong Texan.

3. I am a father of multiple kids and an active member of my community. I work at a nonprofit and serve on the board of another nonprofit organization that provides programs and services to families and youth in underserved and economically marginalized areas of Bexar County.

4. I am also the co-owner of 360 Queen Entertainment LLC, which is a drag production company in Bexar County, Texas. My partner and I are both gay Latinx men who grew up Catholic and founded this company together to provide joy, hope, and celebration for our community.

5. During the COVID-19 pandemic, my partner and I spent a lot of time binge-watching *RuPaul's Drag Race* and fell in love with drag. Drag is a form of artistic expression that involves performers acting, dancing, or wearing outfits in ways that exaggerate masculine or feminine characteristics. Drag performers often sing, lip-sync, and do incredible dance routines to entertain and connect with their audiences. As my partner and I fell in love with drag artistry, we decided to share this love with others by hosting a drag show birthday party in our backyard with friends and family in September 2021. The response we received from our friends and family was incredible. We realized that we loved organizing events and thought this was something we could do more often—even professionally.

6. My parents own a restaurant in Bexar County and allowed me and my partner to rent out the back patio of their restaurant at an agreed-upon cost. In early 2022, we founded 360 Queen Entertainment and hosted our first commercial drag show in July of that year. It was a huge success. We received tremendous support from the community and noticed a high demand

in our community for drag performers to come to San Antonio, especially stars from *RuPaul*. I have experience in marketing, communications, and development, and we quickly attracted a large community of support for our events.

7. We have now hosted drag shows at my parents' restaurant every month since July 2022. We have been embraced by drag performers, other drag production companies, and people across the country who are fans of our productions. This community who loves drag and supports LGBTQIA+ Texans has given us strength in the face of adversity and attacks on drag and our community.

8. My partner and I believe that drag can be fun and accessible for all audiences. We take pride in bringing globally renowned drag stars to Bexar County, including Robin Fierce, Kahanna Montrese, Luxx Noir London, and Jax.

9. The following photos are from our shows on the back patio of the restaurant, which I would be able to testify to.







10. We try to keep our shows affordable so that people who watch drag stars on *RuPaul* will be able to see these performers in-person without paying exorbitant prices. Every month, our guests' ticket prices include a choice of entrée for dinner, chips and salsa, cocktails, and access to the show. The *San Antonio Current* recently ranked our “Bottoms Up Diva Dinner” as the third best drag show in San Antonio for 2023.

11. People love that our performances are a family collaboration between myself, my partner, and my parents. But this also makes me worry for my family and want to be cautious that anything we do cannot possibly be interpreted as violating the law.

12. Because of protests and threats of violence against drag venues and performers, we generally limit ticket sales to guests ages 18 and up, but we do not believe that drag is

inappropriate for children or inherently sexual. As a small business owner, I also want to have the choice of whether to allow guests younger than 18 at our shows in the future.

13. On occasion, we have welcomed parents who individually requested to bring their teenagers to shows. One mom asked if she and her teenage daughter could watch the show because her daughter's eyes filled with tears of joy at the idea of being able to watch one of her favorite drag performers from *RuPaul's Drag Race* in real life. We would like to have the decision as a business to make exceptions in the future on a case-by-case basis, but SB 12 threatens to destroy that choice and drive us out of business altogether.

14. Even when we attempt to limit ticket sales to those over the age of 18, we cannot guarantee that our drag shows will not be presented "on the premises in the presence of an individual younger than 18 years of age." It is not clear to me what exactly SB 12 means by this language, but 360 Queen Entertainment hosts our drag shows on the back patio of a restaurant, adjacent to the main dining room where families and kids sit inside and walk around. The drag shows are partially visible from the parking lot and also through windows inside the restaurant.

15. In April 2023, as SB 12 was making its way through the Legislature, someone called the police on us and accused me and my family of engaging in "illegal" activity by hosting a drag show at a restaurant where families and kids were present. The person complained that "what you're doing here is illegal," "there are children around," "it's inappropriate," and "it's perverted." When someone explained that hosting a drag show was not illegal, the person complaining said, "well, one day it's going to be."

16. We have already had to significantly change our business operations in response to the Drag Ban. On July 1, 2023, we held our monthly drag show half an hour later than usual to try to give more time for families and kids to clear out of the restaurant before drag artists were

present on the premises, but it was still impossible to clear everyone out of the dining room before the show began.

17. We are currently planning on hosting a show on August 25, 2023, that we have significantly modified to start after the restaurant closes at 9 pm. To accommodate this change, the restaurant will have to shut down two hours early and lose out on business and revenue in the dining room while maintaining the same level of staffing to serve customers at the drag show on the back patio. Even while shutting down the restaurant at 9 pm, we cannot guarantee that every family and child will leave the establishment, since some people choose to linger and finish eating even after the restaurant stops serving.

18. Even though the Drag Ban does not take effect until September 1, we had been trying to prepare for the law's enactment and to see if it is possible to reduce the chance of someone younger than 18 being on the premises during our performances. We took these steps despite our conviction that our show in no way exposes children to ill-intended or sexual content. We believe that having to take these measures unnecessarily would force our shows and performers into the shadows, hidden late at night from anyone under the age of 18.

19. Even while taking these extreme and costly measures, however, we have determined that we cannot guarantee that no one under the age of 18 is present on the premises of the establishment where shows are currently held, even if we hold our shows late at night after the restaurant is closed. Because families and children could still see our shows from the parking lot, we fear that we could still be accused of having shows that arguably violate SB 12 "on the premises in the presence of an individual younger than 18 years of age."

20. Because of this vague and broad law, we have made the devastating decision to cancel all shows after September 1 for fear of prosecution or penalties under SB 12. We had

hoped to hold a drag show dinner on either September 9 or September 23, but we have decided not to do so because of the impending Drag Ban and the threat of civil and criminal penalties. Because of the uncertainty and enactment of this law, we have not scheduled any shows after September 1, and we have not been able to advertise any such shows. We normally book performers months in advance and have to arrange flights and hotel rooms for *RuPaul* stars from out of town. We normally sell tickets for our shows starting a month in advance, so it will be difficult for us to host a show this September even if we are able to block this law by September 1.

21. We fear that our shows will be targeted for enforcement by SB 12 because the Legislature and Governor Abbott proclaimed that this law targets and criminalizes drag shows anywhere that people under the age of 18 might be present. Our drag events are not obscene or sexually oriented in our opinion. But they are fun, comedic, and we reasonably fear that they could be considered to “appeal[] to the prurient interest in sex” since this term is vague and undefined. Even though we do not believe that our shows appeal to a “prurient interest,” the demonization and stigmatization of drag shows as inherently sexual or obscene further expose us to punishment and penalties under SB 12.

22. The drag entertainers at our events use a variety of accessories and prosthetics like wigs, makeup, high heels, bodysuits, butt pads, hip pads, and prosthetic breasts. They also sometimes perform gestures or gesticulations that could arguably be interpreted as “sexual” by others, such as twerking, dancing, sitting on people’s laps, or flirting with customers. We also fear that SB 12 could lead our performers to be accused of “representation [of] . . . simulated . . . sexual acts,” or “simulated contact occurring between one person and the buttocks, breast, or any part of the genitals of another person.” When our performers use prosthetics or wear tight outfits,

they also could be accused of the “exhibition or representation, actual or simulated, of male or female genitals in a lewd state,” especially since these terms are vague and undefined. And because the term “nude” is so broadly defined, I worry that we could be targeted by SB 12 if one of our performers even partially or momentarily reveals part of a breast or buttocks, or has an accidental wardrobe malfunction.

23. As soon as SB 12 passed, I knew that we would be a target under this new law. Because we are one of the only drag shows in San Antonio that is hosted at a restaurant instead of a bar and our show is visible from inside the restaurant and the parking lot, I worry that we will be an immediate target by the Attorney General and District Attorney if we try to stay open. Even though I don’t perform drag myself, I worry that I could be accused of aiding and abetting since at least one person has already called the police on me and accused me of engaging in illegal conduct.

24. During our shows, my partner and I control the premises of our commercial establishment and cannot afford to expose ourselves or my parents to fines of \$10,000 for each alleged violation, plus attorney’s fees and investigation costs. The margins in the restaurant and performance industries are slim, and the increased costs of trying to comply with SB 12 or facing civil or criminal sanctions would be financially ruinous.

25. If SB 12 goes into effect, it will essentially shut down our business entirely. This will harm us financially, chill our free speech and expression, and cut off a source of joy and happiness for myself, my partner, my parents, and our community.

26. SB 12 will also completely derail our business growth plan, which aims to expand to other restaurant venues that would be restricted by the Drag Ban. We believe that growth is part of the entrepreneurial spirit that every business owner should have the freedom to pursue.

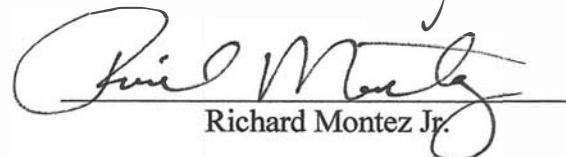
27. We do not want to stop hosting performances due to the Drag Ban after September 1, which will effectively end our business, but we have made the difficult choice to do so because we do not want to expose ourselves, our performers, or my parents' restaurant to the harsh civil and criminal penalties that SB 12 threatens to impose.

28. I am devastated to have to shut down my business and stop hosting performances that are beloved by our community and performers. I am heartbroken that SB 12 threatens to destroy the joyful business that my partner and I created with the loving support of my parents and children.

29. I am bringing this lawsuit to stop the Attorney General and Bexar County District Attorney from enforcing SB 12 against me and taking any action to suppress my free speech and expression and irreparably harm my business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this the 9 day of August, 2023.



Richard Montez Jr.